IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CONFIRMATION CASE NO.3 OF 2005

The State of Maharashtra : Appellant.

versus

Ajitsingh Harnamsingh Gujral : Respondent.

WITH

CRIMINAL APPEAL NO.518 OF 2005

Mr.Ajitsingh Harnamsingh Gujral]
(At present lodged at Yerawada] Appellant.
Central Prison, Pune,Maharashtra] (Original
Aged about 50 years.] Accused)

versus

The State]
(Meghwadi Police Station, Mumbai]
In their C.R.No.54/03)] Respondent.

Mrs.A.S.Pai, APP, for the State.

Mr.S.G.Abbas Kazmi for the original accused.

CORAM : D.G.DESHPANDE

S.A.BOBDE, JJ.

DATED : JUNE 26, 2006.

JUDGMENT : [PER D.G.DESHPANDE,J.]

1. The Confirmation Case relates to the sole accused Ajitsingh Harnamsingh Gujral so also the Appeal which has been filed by him. The accused has been convicted by Additional Sessions Judge, Greater Bombay for the offence under Section 302 of the Indian Penal Code for murder of his wife Mrs.Kanwaljeet Kaur, his son Amandeepsingh and two daughters viz. Neeti and Taniya and, he was sentenced to death subject to confirmation of this Court. The accused has challenged his conviction by filing separate appeal. Both were, obviously, heard together by us. The Additional Sessions Judge has also passed an order relating to Muddemal Property with which we are not directly or immediately concerned.

2. The accused is a businessman. He was a married man having one son and two daughters. He was married with deceased Kanwaljeet Kaur about

25 to 27 years prior to the incident dated 10-04-2003. He had a son Amandeepsingh aged about 20 years and two daughters viz. Neeti and Taniya, aged about 22 years and 13 years respectively. All of them were killed by this accused in early hours of the morning on 10-04-2003 by pouring petrol on their persons and setting them on fire.

3. Earlier the accused belonged to Ludhiana. However, he was shifted to Mumbai with his family and started residing in Jyotsna Building. Initially he was doing business of catering in the same building and his son Amandeepsingh was assisting him in that business. After some time, the accused shifted his catering business in Kamlesh Building which is situated in the same locality of Shere-Punjab colony, Andheri. There were several employees of the accused to assist him in the business of catering. Those servants used to sleep in front of his flat in the varandah. The accused was having his Maruti Zen Car and his son was having motorcycle.

4. According to the prosecution, the accused was a hot tempered man. He was a dictator in the

family and his wife & children were resenting his dictatorship. There were frequent quarrels in the family on account of the attitude of accused. Further it is alleged by the prosecution that the accused was ill-treating his wife and at twice he had assaulted her with a leather belt.

5. On the night of 09-04-2003 the accused and all his family members were in their flat. All the servants were sleeping out side. The accused was seen coming to the flat between the night of 09-04-2003 and 10-04-2003. There were two bed rooms in the flat of accused. Ordinarily the accused and his wife used to sleep in one bed room and three children used to sleep in another bed room. There was quarrel on the night of 09-04-2003 between the accused and his wife after he returned back. Then between 4.00 and 4.30 a.m. some of the servants heard a big noise of something bursting followed by or preceded by crying in pain. The servants woke up and found that the flat of the accused was on fire. There was utter confusion and chaos. Somebody phoned to fire brigade and fire engine came. The police also followed. Door of the flat was opened. It was smoky . Strong smell of petrol was coming.

Fire was extinguished. Then only they entered the bed room, where four bodies of the members of the family of accused viz. his wife, his son and two daughters were found fully burnt and dead. The police made inquiry from the servants and then a report of murder was lodged by PSI Prakash Shivram Kamble. Investigation soon started. Inquest panchanama, spot panchanama were made. Bodies were sent for post mortem.

6. In their preliminary inquiry, the police found that the Maruti Zen Car of the accused was not there and the accused was also not there. Attempts were being made to trace and search him and, ultimately the accused was caught hold of on or near Kisangad, Madanganj in Ajmer District on 14-04-2003. The car which the accused was driving was seized so also an amount of 7,68,080/- was seized along with about 24 silver coins, 7 safari dresses and seven turbans. A police officer was deputed from Bombay and the accused was brought to Bombay.

7. Then statement of the accused was recorded under Section 27 of the Evidence Act and a red bucket from which he had thrown petrol on

the persons of all the four members of his family was recovered at his instance.

8. All the muddemal, recovered by the police from the spot viz. burned clothes, petrol can, bucket, broken glass pieces etc. were sent to the Chemical Analyser.

9. In the inquest, it was found that son Amandeepsingh had certain injuries on his body. Because of fire, the glass from windows was broken, the glass pieces were shattered in the room and one piece was removed from one of the injuries of stomach of the son. Expert electrician was called. He inspected the premises and opined that there was no short circuit. The Air-Conditioner’s compressor was intact. Post mortem of all the bodies was conducted and it was found that all the four persons died as a result of burning.

10. During the course of investigation the statements of relatives of the deceased, neighbours, and the servants of the accused were recorded. All the muddemal property was sent to the Chemical Analyser for opinion. Thereafter

charge sheet was filed. Separate charges under Section 302 of the Indian Penal Code was framed against the accused for committing murders of his wife Kanwaljeet Kaur, his son Amandeepsingh and two daughters Neeti and Taniya. The accused pleaded not guilty to the charges. Thereafter, the Additional Sessions Judge, recorded the evidence of the prosecution witnesses. In all 19 witnesses were examined as the prosecution witnesses. Thereafter statement of the accused under Section 313 of the Criminal Procedure Code was recorded. The accused expressed his desire to examine witnesses in defence of his plea of alibi and, accordingly four witnesses were examined by the accused. The Additional Sessions Judge heard the arguments and also took on record the written arguments submitted by the advocate for the accused and, ultimately came to the conclusion that the prosecution has proved beyond reasonable doubt that the accused has committed murders of all four members of his family and, so far as sentence is concerned, the Additional Sessions Judge came to the conclusion, after considering cases cited before him by both the sides, that this was a rarest of the rare case and imposed penalty of death upon the accused.

Hence this Reference and the Appeal by the accused.

11. The advocate for the accused before us was also the advocate for the accused before the trial Court. He attacked the judgment of the trial Court on the following grounds.

. Firstly, according to him, the accused was leading a happy marital life for more than 25 to 26 years before the alleged offence and he had no motive to kill all the four inmates of his family, nor the prosecution was able to prove any motive. Secondly, according to him, though the witnesses had tried to create a picture that the accused was very hot tempered and/or short tempered person and was a dictator in the house, it was not so. According to the defence witnesses, the accused was treating all his family members equally with respect and love. Son Amandeepsingh was treated equally as he was made to look after the business and share responsibility of the family and, if the accused was a dictator, he would not allow his son to take part in conducting the business. Thirdly, none of the servants of the accused, two out of

them examined by the prosecution, has nowhere stated that the accused was a hot tempered and/or short tempered person. No one from them or any of the employee working under the accused complained against the accused about the ill-treatment.

12. The advocate for the accused further contended that the accused had no reason to kill all the four members of his family. His sister Gurdeep Kaur was suffering from cancer at Delhi. In March/April 2003 her condition was critical and therefore at about 2.00 a.m. on 10-04-2003 the accused left his house to see his ailing sister at Delhi. The accused stayed at Udaipur in a hotel in his own name. He had not changed number plate of his Maruti Zen. He had carried sufficient amount to meet the expenses of treatment of his sister, and therefore, it could not be said that the accused was absconding. Plea of alibi, as raised by the accused, according to his advocate, was successfully proved and, therefore, on that count itself, the accused was entitled for acquittal.

13. The advocate for the accused further contended that all this investigation done by the police was done at the behest of Phuldeepsingh Marva - the brother-in-law of deceased Kanwaljeet Kaur with the only aim of implicating the accused. It was contended by the advocate for the accused that because the accused was not found with his car in the morning of 10-04-2003, the police concluded that it must be accused who committed the murders and then shut their eyes to the other aspects of the matter and did not make any investigation to really find out as to who was culprit.

14. The advocate for the accused contended that if the evidence of two servants of the accused is taken into consideration, it will be clear that the fire broke out at about 4.00 or 4.30 a.m. on 10-04-2003. One of the servants heard some cries and, if that is so, it indicated that all the four persons died at about 4.00 a.m. or 4.30 a.m. and by that time the accused had already left his house at 2.00 a.m. Therefore, the accused could not be held responsible for these murders.

15. The advocate for the accused further contended that the accused was not permitted to cross examine the witnesses fully . Many of his important questions were disallowed by the trial court and that result in mis carriage of justice as there was no fair trial given to the accused. Regarding investigation, the advocate for the accused tried to contend that if Amandeepsingh had three incised wounds and, a chopper was recovered from the scene of offence, then in that case it indicated that the assailant had inflicted some injuries by chopper on Amandeepsingh & if that was so, the whole theory of the prosecution about burning of four persons by pouring petrol upon them becomes suspicious, because many questions remain unanswered.

16. The advocate for the accused also contended that the so called discovery statement made by the accused leading to the discovery of red bucket allegedly used by the accused for pouring or throwing petrol upon the four victims was a totally bogus theory. Because if house of the accused was searched fully in his absence on 10-04-2003, then nothing prevented the police from recovering the said bucket in the very first

instance i.e. in the panchanama of scene of offence carried on 10-04-2003 itself. Therefore, this was planting of incriminating articles by the police at the behest of brother-in-law of deceased Kanwaljeet Kaur.

17. Further according to the advocate for the accused, the theory of the prosecution that the accused was last seen entering the house at 12.00 mid night was not sufficient to connect the accused with murders. Because if the murders were committed at or around 4.00 ‘O’ Clock, there was a gap of four hours and that was not sufficient for the prosecution to connect the accused with the offence of murder. According to the advocate for the accused, there was no close proximity of the accused in the house at the time of murder and that theory was required to be rejected. The advocate for the accused also pointed out that 15 days before the incident, the accused had inaugurated a hotel which clearly shows that the accused was financially well of and there was no necessity for him to murder all the inmates of his family. He further contended that this could be a case of mass suicide because of frustration of the family members. In no

case, the accused could be convicted for murders and the entire judgment of the trial court was required to be quashed and set aside.

18. On the other hand, the learned APP Mrs.A.S.Pai contended that all these submissions were made before the trial Court by the defence and they were rightly rejected. She contended that it was proved beyond reasonable doubt that the accused was a hot tempered and/or short tempered person and he was a dictator in the family. Secondly, it has come on record, according to her, that on the night of 09-04-2003 when the accused returned, there was a quarrel between the accused and his wife. Thirdly, seizure of petrol can from the spot with some petrol in it and recovery of bucket used for throwing the petrol on the four victims were the strong circumstances leading to the conclusion about the guilt of the accused. The learned APP also contended that if the accused was seen at 12.00 in the midnight entering in the house and when the four persons were found dead in the house at 4.00 a.m. in burnt condition by petrol, then the prosecution has succeeded in proving the theory of last seen together and, the gap of four

hours did not matter because no out-sider was supposed to enter the house between the midnight and 4.00 a.m.

19. The learned APP for the State contended that even if it is proved that sister of the accused was suffering from cancer, nothing has come on record to suggest that she was in any way serious or was in such a critical condition that the accused was required to leave his house suddenly at 2.00 a.m. as alleged by him, for going to Delhi. The learned APP contended that finding of sum of Rs.7,68,080/- with the accused 24 silver coins, 7 turbans and 7 safari dresses clearly indicates that the accused had planned everything in advance and he wanted to leave Bombay permanently so as to not to return back after committing gruesome murders.

20. The learned APP further contended that there may or may not be motive but the fact, that four persons were killed by the accused, was proved beyond reasonable doubt because of the circumstantial evidence brought on record by examining mother-in-law and brother-in-law; two servants, recovery of cash and other things from

the accused at Kisangad Madanganj, Dist Ajmer Rajsthan, his abscontion from the scene of offence for four days & his arrest by police, at Kisangad Madanganj Dist.Ajmer Rajasthan by Meghwadi Police, Mumbai. Regarding red bucket, the learned APP contended that it is true that the police did search the house of the accused on the date of incident while carrying out panchanama dated 10-04-2003, but according to her, it is not that the police seized everything in the house, unless they get some information that a particular thing was used in the commission of offence and, therefore, when the accused voluntarily disclosed under section 27 of the Evidence Act about use of the bucket in splashing the petrol and when the bucket was found and it tested positive about petrol as per the report of the C.A. then it fully strengthened the case of the prosecution. The learned APP contended that investigation in this case was most impartial. It was not slipshod investigation as alleged by the advocate for the accused. All circumstances brought on record, pointed towards the accused and the accused alone and, therefore, even if the case was based on circumstantial evidence, the guilt of the accused

was proved beyond hilt. Therefore, there was no reason to interfere with the judgment of the Additional Sessions Judge.

21. After these submissions were made by both the sides on merits of the case, they also argued before us, whether this is rarest of the rare case. Both the advocates cited number of authorities before us. But that aspect of the matter will be considered after considering the case of the prosecution on merits, by us, with reference to the respective arguments advanced.

22. The admitted facts, as noted by the trial court in its judgment in this case, are that deceased Kanwaljeet Kaur was the wife of the accused, deceased Amandeepsingh Kaur was the son and deceased Neeti and Taniya were the daughters of the accused. The accused was married to said Kanwaljeet Kaur more than 25 years prior to the incident. They had shifted from Ludhiana to Bombay. That the accused was doing catering business in Bombay. That four persons died on 10-04-2003 in the morning.

23. Since the learned advocate for the

accused contended that this could be a case of mass suicide, we have to consider that aspect first, though we do not find any substance in the said submission.

24. Firstly nothing is brought on record by the defence to show that as to why the mother and her three children should commit suicide if everything was going on smoothly in their family. If the financial position of the accused is well; if he was not dictator, as alleged, and if the son Amandeepsingh was entrusted with the job of looking after the business of the family even at his young age of 20 years, there was no reason for four persons to commit suicide. The theory of suicide in this particular case is most difficult to believe, because a mother, unless she is pervert, insane or totally frustrated with life with no hope of bright prospects or future, would not allow her three children to die along with her and that too in such a ghastly and gruesome manner viz by pouring petrol upon themselves and undergoing deep anguish, sufferings and intent pain preceded by burning on account of petrol. Therefore, this theory of mass suicide, being advanced for the first time

before us without any basis in the evidence in the form of suggestion or any attempt to prove probability of their theory, has to be rejected out right.

25. So far as accidental death is concerned, nothing was brought on record to suggest how all the four persons died as a result of accident. There is positive evidence on record to show that there was no short circuit and there is an evidence of electrician, P.W.15 - Chandrakant Shiva Rawool, who was A.C. Mechanic, to the effect that there was no bursting of compressor. He has stated that he was running a shop namely "Saikripa Refrigeration" and used to repair the fridge and air conditioning units. He has further stated that on 16th April, 2003 he was called by Meghwadi Police Station in the flat of accused to check the air conditioning machine. He saw two AC machines in the flat i.e. two separate AC units in two bed rooms. In the first bed room the plug of the AC was not in working condition and in the second bed room the plastic material in the A.C. unit was found burnt. ; However, the compressor and other steel material and capacitor were not in burnt condition and,

there was no bursting of compressor. He had not noticed any short circuit in the flat.

26. Same is the evidence of P.W.12 Ganesh Anant Parab, who was a lineman at Meghwadi Electricity Receiving Station. He visited the spot, i.e. the house of accused, on 10th April 2003 at about 7 a.m. where the fire brigade and police personnel were present. He noticed that fuse (cut-out) of the electricity supply was taken out. But he noticed that there was no short circuit. There is no cross examination of this witness by the accused.

27. Third witness examined by the prosecution is P.W.13 - Chand Mohd. Ismail Shaikh, who was the Centre Officer in Fire Brigade at Marol, Mumbai. He has stated that he received message from control room about breaking out of fire in the house of the accused. He went there along with staff and fire engine and, before he started the operation, for safety purpose, he had taken out the fuse (cut-out) of the electricity. Nothing was brought out in the cross examination of this witness to show that the victims caught fire by any other reason.

28. It will be, therefore, clear that there is nothing on record, either in the evidence of prosecution witnesses or in their cross examination, from which it can be held that the four victims died as a result of accident. That theory has, therefore, to be totally and completely ruled out.

29. Therefore, the theories of mass suicide as well as death by accident are both required to be and are hereby rejected. So far as homicidal death is concerned, the inquest report, the post mortem report and, the manner in which the four persons died without any resistance clearly show that they died as a result of homicidal death.

30. At this juncture, it is necessary to reject the theory advanced by the advocate for the accused that Amandeepsingh - the son of the accused, was injured with knife or chopper. Firstly, there is no charge in that regard. The charge is very specific in respect of separate victim and that is by burning by petrol. However, merely because the charge is not framed in particular manner, cannot take away the right

of the defence to advance any other theory which is, according to the defence, is consistent or inconsistent with the prosecution case. The theory of use of knife is advanced by the advocate for the accused on the basis of post mortem report of Amandeepsingh. The prosecution has examined Dr.Prakash Maruti Shinde (P.W.2) who conducted the post mortem on all the four bodies. He has proved those four reports at Exhibits 21, 23, 25 and 27. So far as other three victims are concerned, i.e. excluding Amandeepsingh, there is no injury by any sharp object on their persons and nothing was noted in that regard by P.W.2. In fact the cause of death of all the four victims is given as shock due to 100% superficial to deep thermal burns. However, so far as Amandeepsingh is concerned, Dr.Shinde (PW 2) has stated in his evidence and also noted in his post mortem report of Amandeepsingh at Exhibit 21 that there was incised wound over left side lower abdomen 3 cms. medial to the anterior superior iliac Spine 4 x 2 cms. x cavity deep. Both angles acute. Then second injury was incised wound 5 cms. left to the umbilicus (transversely) 4 x 2 cms x cavity deep angles acute. And third injury was, incised wound over

left side lower back 2 cms. above the posterior iliac crest 6 cms. left to midline 4 x 2 cms x cavity deep. Both angles acute. In his evidence Dr.Prakash Shinde (PW 2) has stated that there were corresponding internal injuries and that were possible by sharp cutting and pointed weapon or piece of broken glass if it is in the form of sharp and pointed. External injuries Nos. 2, 3 and 4 were fresh in nature and External injury No.1 might have been caused within 12 hours. In the cross examination the witness (PW.2) has stated that injuries on the person of Amandeepsingh were three additional injuries while other dead bodies did not have such incised wounds and these injuries were possible by sharp and pointed object like knife. It was with reference to these injuries on the body of Amandeepsingh that the learned advocate for the accused tried to contend that a knife was used in the commission of offence. He tried to get support to this argument from the fact that when spot panchanama of the flat of accused was made, then in the hall on the sofa in an old Urdu newspaper a chopper was found having length 16 inches and breadth 3 inches. It appeared recently sharpened. Further support was sought

to be obtained from the C.A. report (Exhibit 63) wherein the C.A. has opined that the chopper had human blood but grouping was inconclusive.

31. This theory of use of chopper has to be rejected firstly because there is no charge and secondly in the panchanama (Exh.36) referred to above, there is no mention that when the chopper was taken charge of it had any blood stain. At least nothing was shown to us in that regard by the advocate for the accused. Thirdly, we have seen the chopper and it is not a tapering weapon or weapon having sharp pointed end. One side is blunt and the other side is sharp. The chopper is capable of cutting from one side and it is difficult to penetrate with. If this chopper is used for causing injury, the breadth of the injury has to be more & not confined to 4 cms as is noted in the postmortem report of Amandeepsing by P.W.2. And the last point that falsifies this theory of use of chopper is the evidence of Investigating Officer and Inquest Report.

32. P.W.1 - Praksh Shivram Kamble is the officer who lodged the report and registered the offence. He reached the spot immediately after

the fire brigade reached. He saw four bodies. He has stated in para 5 of his evidence that he noticed that there was injury on the left side to the waist near stomach on person of male dead body and it was bleeding injury. He also noticed another injury on the left side of the waist wherein broken piece of the glass was found in the said injury and it was bleeding injury. This fact gets corroboration in the FIR and in the inquest report (Exhibit 38). There is mention that a glass was seen in the body of Amandeepsingh at the very same place as described by P.W.1 and as stated in his F.I.R. In addition, the panchanama and the evidence of A.C. mechanic, discussed above, clearly show that due to intense fire there is mention that the glass pens or panels of the windows were broken and pieces of glass were scattered all over the room. This is possible because of intense heat created by burning of petrol and human bodies.

33. For all these reasons, the theory put forth by the advocate for the accused that chopper must have been used for committing murders, at least for committing murder of Amandeepsingh or causing injury to him, has to be

rejected. The injuries on the body of Amandeepsingh were as a result of penetrating pieces of broken glass.

34. The other important aspect is that even in case of Amandeepsingh, Dr.Prakash Shinde (PW 2) has not given his opinion that the three injuries noted by him were sufficient in the ordinary course to cause death. There is no such cross examination in this regard. So far as depth of injuries is concerned, it was cavity deep and no internal organ was affected. For all these reasons we have to hold that the trial court has rightly held and we affirm that findings that four victims died as a result of burning by petrol. Amandeepsingh - the son of the accused also died due to same reason and that injuries on his body were not by using of chopper.

35. Secondly we have to consider the attack of the advocate for the accused on the last seen together theory. In this regard, the prosecution has examined PW.4 - Kamalsingh Rawat - the cook and P.W. 16 - Vinodkumar Mandal - the servant of the accused. P.W. 4 Kamalsingh Rawat has stated

that he was working in the hotel of the accused as a cook. He used to attend his duty from 8 a.m. to 3.30 p.m. and from 6 p.m. to 11 - 11.30 p.m. He has stated that he used to sleep in front of flat of accused where the incident took place. He was knowing all the family members. According to him on 9th April 2003, he was present in the Kamlesh Building at the catering place at about 6 - 6.30 p.m. Accused and Amandeepsing were also present at that time. At about 8 p.m. mother of Amandeepsing came in the hotel and at 9. 30 p.m. Amandeepsingh and his mother left the hotel and went towards their residence. At that time the accused was present in the hotel. This witness left the hotel between 11.30 to 11.45 p.m. and went towards Jyotsna Building. He was accompanied by one co-cook namely Prakash. Both of them went to sleep in front of the flat of Amandeepsingh. Thereafter i.e. after about half an hour the accused returned to his residence along with sweeper. The said sweeper was also sleeping along with these servants P.W. 4 Kamalsingh and co-cook Prakash. Then at 4.00 to 4.30 a.m. he heard noise like bursting of something. There is nothing in the cross examination of this witness

to suggest that this witness was not sleeping at the place mentioned by him.

36. Another witness in this regard examined by the prosecution is P.W.16 - Vinodkumar Mandal. He has stated that he was working with the accused in April 2003 along with other servants and they used to sleep near the bed room of the flat of accused in the veranda. On 9th April 2003 he returned from Kamlesh building to Jyotsna building at about 12 midnight along with other servants. They led their beds in the veranda in front of the flat of accused near bed room of the accused and his wife. At that time, he heard sound of quarrels from the house of the accused loudly and that was from the hall of the accused. He identified the sound as that of the accused and his wife. The said quarrel lasted for 5-10 minutes. Thereafter he went to sleep and then at 4.30 a.m. he heard sound of like collapsing of the building.

37. This is the evidence led by the prosecution for proving the fact that the accused was in the flat at or about 12.00 mid night i.e. on the night intervening 9th April and 10th April

2003. Both these witnesses have stated that between 4.00 and 4.30 a.m. the fire broke out and P.W. 4 has stated that he heard the noise of crying from the flat of the accused. Admittedly, the accused was not there at the time. In this background of the matter, the advocate for the accused contended that even if the accused was seen in the flat or there is evidence that he was in his flat at 12.00 midnight, the incident occurred between 4.00 and 4.30 a.m. and that is not sufficient to show close proximity of the accused.

38. He relied upon the judgment reported in **2006 (2) Crimes 176 [State of Kerala v/s. Hariharan].** In that case two police constables were on picket duty at Keloth on the night of 29-9-1996. At about 10.30 p.m. three pedestrians informed them that some-one was lying beside at Chalingal Slpe. These constables, therefore, went to the spot and found a person lying in injured condition. There were four accused in that case. One of the relative of the deceased (PW 5) stated in his evidence that he had seen accused No.3 with the deceased on the previous day noon. The victim was seen lying on

the road on the night of 29-9-1996 and, according to this witness (PW 5) he was seen on previous day noon means in the noon of 28-9-1996. Therefore, in that back ground the Supreme Court held and observed that "Unless the accused and the deceased are seen at a time, very proximate the death, he cannot be convicted on the basis of last seen theory." This judgment does not apply to the facts of the present case. The victims died in the house of the accused. He was there, as the per the evidence of these witnesses, up to 12 'O' Clock and all the four persons were died between 4.00 a.m. and 4.30 a.m. and, therefore, it has to be held in the circumstances that the prosecution has succeeded in proving that the accused was last person to be in the company of the deceased. We have already noted that the death took place at a time when no out sider or stranger ordinarily would have entered the house of the accused without resistance and further it was most natural for the accused to be present in his own house during night.

39. Coming to the next aspect of the prosecution case regarding motive, it was urged by the advocate for the accused that the

prosecution has failed to establish any motive for the accused to commit these ghastly murders. The trial Court on the other hand, after considering the evidence of mother-in-law and brother-in-law of the accused and defence witnesses, come to the conclusion in para 67, after observing earlier that in every case motive need not be established if other circumstances are sufficient to point to the guilt of the accused, that the accused had given threats of killing to all the four members of his family and, therefore, motive as alleged by the prosecution, has been established that due to the quarrels and the hot temper of accused and as per the threats given by him, he intended to commit murders of his wife, two daughters and a son.

40. We must clarify here that "the motive" in the sense in which this word is used for criminal jurisprudence is not there. However, before coming to this conclusion about motive, it is necessary to scan the evidence of brother-in-law and the mother-in-law and the defence witnesses. P.W.3 is Phuldeepsingh Marva who is the brother-in-law of the accused. The wife of P.W.3 and the wife of accused were real sisters. He

has stated that he was having cordial relations with the family of the accused and both the families were meeting and visiting each other. He has stated that the relations between the accused and his entire family members were tensed. The accused used to behave with his family members as a dictator and did not have cordial relations with all of them. Son and daughters of the accused did not like the dictatorship of accused and, therefore, there were always quarrels between them i.e. the accused and his family members. The accused used to assert that 75% decisions would be of his in the family. The witness persuaded the accused several times to change his nature. But the accused never paid any heed to his request or advice. In the cross examination, this witness has admitted that there were no police cases between the accused and his family members and the accused has given decision making power to his family members to the extent of 25%. This witness (PW 3) has also stated that the accused was tensed as he has suffered losses at Ludhiana on account of which he shifted to Mumbai.

41. The prosecution has examined P.W.5

Smt.Bhagwantkaur Oberoi, who is the mother-in-law of the accused. She has stated that the accused shifted to Bombay two years before. The relations between her daughter and accused were not cordial and their matrimonial life was unhappy due to very angry nature of the accused. P.W.5 has also stated that her daughter was very unhappy in her matrimonial life and she was also subjected to cruelty by accused. Same complaints were made by children to their grand-mother (PW 5). She further stated that the deceased wife of the accused used to tell her (PW 5) that the accused used to beat her by leather belt. This witness has frankly admitted that since she knows the nature of the accused, she never dared to persuade him. In the cross examination she admitted that she was facing one murder trial at Agra. but she was acquitted and she had not lodged any complaint against the accused [about the ill-treatment].

42. As against this, the accused examined defence witnesses not only to prove his alibi. But for proving his over all approach and nature in the family. D.W.1 - Amarjeetsingh Harnamsingh is the elder brother of the accused. He has

stated that the accused was of very friendly disposition and mild manner with all their family members and his friends and, the accused was wholly devoted to his family members and very kind towards them.

43. D.W. 2 - Taranjeetsingh Sardar Gyansingh Walia, who is the friend of the accused, has stated that the accused was of very mild manner and friendly disposition. In the cross examination by the learned A.P.P. for the State this witness has stated that he had no occasion to see accused after accused shifting to Mumbai.

44. D.W.3 - Anantpalsingh Sardar Narang, who is the husband of sister of accused, has stated that the relations of the accused with his family were cordial.

45. It is from this evidence, the trial Court concluded that the accused was a dictator in his family. He was a hot temper man and that was the motive or intention for which he killed all the four members of his family.

46. "Motive" has been defined in The Law Lexicon, Reprinted Edition 1987, on Page 835 as under :-

> "Motive :- Motive is that which stimulates or incites an action; the mainspring of human action; some cause or reason that moves the will and induces action; the moving power which impels to action for a definite result.
>
> INTENT DISTINGUISHED :- Motive is the moving power which impels to action for a definite result; intent is the purpose to use a particular means to effect such result. In the popular mind, intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them.
>
> INTENT DISTINGUISHED :- "Intent" and "motive" are not identical and intent often exists where a motive is wholly wanting.

47. From the aforesaid definition, it is

clear that it may not be proper to conclude that the accused had any motive to kill them. At least nothing is brought on record obviously because all the four members of the family of accused, who were supposed to know about this motive, are killed by him. The mother-in-law and brother-in-law are, in any case, the strangers and outsiders and they do not appear to have day to day knowledge of the happenings in the house of accused. But, as rightly held by the trial court, if the evidence about guilt of the accused is otherwise sufficient and conclusive then absence of motive or inability of the prosecution to prove the motive, cannot affect the case against the accused.

48. From the evidence of all 5 witnesses, discussed above, i.e two prosecution witnesses and three defence witnesses, it is true that the defence witnesses are trying to paint a picture of the accused as docile, friendly loving and caring father or husband, where as the P.W. 3 and P.W. 5 are trying to show that the accused was a dictator and a hot tempered man. The trial court rejected the evidence of the defence witnesses on the ground that none of them had any

knowledge about the nature of the accused after his shifting to Bombay viz. two years before the incident. But even in spite of such contradictory evidence it can be held from the evidence of P.W.3 and 5 that all was not well in the family of the accused and there was serious discords between the accused and four family members. Killing of four persons clearly shows that not even one of them was considered by accused as fit to live or survive and pull on life with the accused.

49. Therefore, even if we may not accept the findings of the trial court that there was motive for the accused to kill them, that does not make any difference.

50. The facts we have held and proved from the case of the prosecution so far are that, the wife, two daughters and the son of the accused died homicidal death in the house of accused himself; that the accused was seen in the house around midnight 12 'O' Clock by two of the servants; that accused was last seen together and we have rejected the theory of accidental death and mass suicide. We have also held that

the relations between the accused and his family members were not cordial and from the statement of mother-in-law who was aged about 70 years it is clear that Kanwaljeet - the wife of the accused had complaints that accused used to beat her by leather belt. It is true that no period of such cruel ill-treatment has been given, even then the finding of the trial Court that their relations were strained has to be accepted. Further there is evidence of two witnesses who are the servants i.e. P.W.4 and P.W.16 of the accused that there was quarrel between the accused and his wife around midnight. In this background, the abscontion of the accused from the scene of offence as alleged by the prosecution becomes vital and important.

51. It is equally true that at this stage we have to decide and scrutinise the defence of accused of alibi. The learned APP relied upon the judgment of the Supreme Court reported in **(2003) 1 SCC 259 [Anthony D'Souze and ors. v/z. State of Karnataka]**. It was also a case based on circumstantial evidence. In para 14 of the said judgment, the Court has considered the conduct of the accused and found that the accused in their

examination under Section 313 Cr.P.C. denied the prosecution case in toto. The Court observed that "In short, in their section 313 statement they completely denied the established facts and offered false answers. By now it is a well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under Section 313 against the established facts, that can be counted as providing a missing link for completing the chain." In the present case, if the examination of accused under Section 313 of the Cr.P.c. is seen, we find that the trial Court put as many as 168 questions to the accused. Question No.79 was in respect of search of the accused when he was arrested in presence of panchas at Kisangad, Madanganj (Rajsthan) and police recovered his Maruti car bearing No.1070, currency notes of Rs.7,68,080/- ; 24 silver coins; 7 safari dress with shikh turbans, 4 toll receipts and bag and the police seized materials under panchanama Exhibit 34 and when explanation of the accused was called, his reply was "It is false". In reply to the last question i.e. Question No.168 - What have you to say about the prosecution case ? the accused has stated, "I am

falsely implicated in this case. I decided to go to Delhi before one month as my sister was serious. So I left my residence at 2 a.m."

52. The accused, thereafter examined four witnesses in defence and relied upon testimony of one prosecution witness P.W.11 - Vinod Ambalal Bohra who was running a hotel at Udaipur (Rajshthan). D.W.3 Anantpalsingh Narang is the witness in this regard. He is related to the accused. The accused is brother of his wife. He has stated that his wife died on 12th July 2003. In the year 2001, cancer was detected. She was operated at Delhi. In the month of March-April 2003 her condition was critical. on 18th April 2003 she was admitted in the hospital at Delhi and she was discharged on 22nd April, 2003. He produced certain documents in that regard and then in para 3 he has stated that his wife had asked accused and his wife to come over to Delhi see her as her condition was critical and deteriorating day by day from 1st week of April 2003. He has further stated that on 7th or 8th April 2003, the accused told him on telephone that he is very busy in his business however, he will come to Delhi to see his sister by road.

This witness (DW 3) then told accused that accused should come via Ajmer and pray for his wife at Ajmer Durgah. In para 4, this witness (DW 3) has stated that he had incurred heavy expenses for the treatment of his wife. The accused assured not to worry about the expenses and he (accused) will bear the expenses of medical treatment of his wife. P.W.11 who was examined by prosecution is Vinod Bohra who was running a hotel at Udaipur. He has stated that on 10.4.2003, the accused came with his car and stayed in his hotel till next day. The accused reached hotel in the evening. The witness has produced certain registers and documents in that regard.

53. On the basis of this evidence, the accused raised plea of alibi. His advocate contended that because the sister of accused was ill, the accused left his house at 2 a.m. on 10.4.2003. He stayed at hotel of P.W.11 in his name. He did not change number plate of his car and the money that was found on his person with silver coins and other articles were taken by the accused to meet the expenses of medical treatment of the wife of D.W.3. Therefore, according to

the advocate for the accused, the case of the prosecution that the accused was absconding is totally false and his plea of alibi should have been accepted by the court because it is supported by the documents.

54. We are not at all in agreement with the submissions made by the advocate for the accused in this regard. There are many reasons for this. First reason is, there is nothing on record to show that a day or two before the accused left Bombay on 10th April 2003, the accused had received any urgent message from the wife of D.W.3 that his presence was imminently and immediately required at Delhi and her condition was critical; or that accused received SOS; that he should immediately run and rush Delhi. Secondly, if the accused had earlier planned to go to Delhi in such a case of urgency and exigency, ordinarily he should have and could have travelled by flight or train and would not have driven to Delhi by his car. Thirdly, looking to the age of accused, who was around 50 to 52 years at that time, ordinarily the accused would not have gone alone on such a long journey. He had number of servants at his disposal, at

least 7 were sleeping in front of his flat in the veranda at that very night, he could have taken one of them as assistant on road. Fourthly there was no reason for the accused not to have taken driver for such a long journey. Fifthly there is no one examined from the hotel to whom the accused had disclosed that he would not be available for looking after the business for at least couple of weeks or one week. The fact, that the accused had with him 7 safari dresses and 7 turbans when he was arrested, clearly shows that the accused had an intention to stay for quite a long time away from his house and away from his business. There is nothing on record to show that prior to this incident the accused was not on talking terms or visiting terms with his mother-in-law. Not a single suggestion was given to this witness by the accused that they were informed by the accused that he is going to Delhi to see his sister or wife of D.W.3. Next impossibility in the theory of alibi is, there is no earthly reason for the accused to leave his house at odd time of 2.00 a.m.. He could have travelled either before mid night or he could have travelled after sunrise. Further there is no explanation from the accused as to why he was

carrying such a huge amount of Rs.7,68,080/- and 24 silver coins. Description of the amount of Rs.7,68,080/- given in Panchanama (Exhibit 34) is as under :-

> Total 12 bundles of currency notes. Each bundle consists of 100 notes of Rs.500/- denomination. Total Rs.6,00,000/-.
>
> One bundle consists of 45 currency notes of Rs.500/- denomination totalling to Rs.22,500/-.
>
> Total 8 bundles. Each bundle consists of 100 currency notes of Rs.100/- denomination. Total Rs.80,000/-.
>
> Total two bundles. Each bundle consists of 100 currency notes of Rs.50/- denomination. Total Rs.10,000/-.
>
> One bundle consists of 94 currency notes of Rs.50/- denomination. Total Rs.4,700/-.
>
> One bundle consists of 8 currency notes

of Rs.100/- denomination. Total Rs.800/-.

One bundle consists of 2 currency notes of Rs.20/- denomination and 4 currency notes of Rs.10/- denomination. Total Rs.80/-.

55. Accused is a businessman. Earlier he was doing business in Ludhiana. In Bombay he was doing business of catering. He was income tax payer and he was furnishing income tax returns. Such a businessman and matured person is not expected to keep such a huge cash of Rs.7,68,080/- in his home particularly when he had not decided well in advance to visit Delhi to see the wife of D.W.3. Looking to the human conduct and the fact that the accused was a businessman paying income tax it can be inferred that the accused must have bank accounts and he must have withdrawn all this amount from different banks. If at all he had planned that trip to Delhi in advance he could have taken Demand Draft or carried amount not in the form of hard cash of Rs.7,68,080/- . The fact that the accused did not change his name in the hotel at

Udaipur or he did not change number plate of his car, is of no consequence. Plea of alibi for all these reasons, lacuna and infirmities was rightly rejected by the trial court as false one.

56. In his statement under Section 313 of the Cr.P.c. the accused has no where given any explanation, how he collected amount of Rs.7,68,080/-. To the contrary, he has denied the fact of seizure of such amount from him as stated above. Further in reply to the last question No.168, he has stated that one month before he had decided to go to Delhi and if that was so, it is most surprising that not a single person has come forward to state about this plan of the accused to go to Delhi If there was such a plan, then there was no necessity for the accused to leave his house at 2 a.m. on 10.4.2003. Plea of alibi is therefore totally false and bogus. If plea of alibi as raised by the accused is found to be false and we have found it to be false, then natural consequence thereof is that the presence of the accused in his house up to 4 'O' clock has to be accepted and then the prosecution case against the accused becomes very strong because if the accused was present at 4

‘O’ clock and at 4 ‘O’ clock or there about and all the four members of his family caught fire by petrol, then it is for the accused and accused alone to explain how and in what circumstances they caught fire by highly inflammable material like petrol.

57. The facts that the accused had left Bombay on 10th April 2003; he was caught at Kisangad, Madanganj with cash of Rs.7,68,080/-, aforesaid dresses and 24 silver coins; he was alone in the car make it amply clear that the intention of the accused was to flee permanently from Bombay forever. No ordinary sane person would carry such a huge amount with him on such a long journey without aid or assistance of driver or assistant, all of whom were easily available to the accused. Therefore, the fact that the accused absconded from the scene of offence soon after the murders took place and he absconded with such a huge treasure with him proves beyond reasonable doubt that the accused never wanted to come back to Bombay. Abscontion of accused from the scene of offence soon after the murders are committed is a strong circumstance in the chain of events.

58. Coming to the aspect of preparation for commission of this offence. The facts proved beyond doubt are that all the four victims were burnt and charred to death by using petrol; all of them died in one bed room which means that all of them were sleeping in one bed room. It has come in the evidence that ordinarily the accused and his wife used to sleep in one bed room and their three children used to sleep in another bed room. But it has also come in the evidence that on the night of 9th April 2003 when the accused came back from hotel, he had a quarrel with his wife. It appears that as a result of this quarrel the wife decided to sleep in the bed room with children and not with the accused. It will not be unnatural to infer that in the quarrel the accused must have said something to the wife which made her to decide not to sleep in his bed room and to go to the room of children.

59. When the police party carried out panchanama of the house of accused i.e. after the fire was fully extinguished and when the FIR was lodged by P.W.1 PSI Prakash Kamble, he found, as stated by him, that in the bed room to the

northern side of the hall on the bed i.e. on the mattress of the bed a 10 litre white plastic can was seen and it had some petrol in it. It was also found and noticed that the can was new. It is a fact that all the four inmates were burned to death by using petrol. Therefore, finding of 10 litre can and some petrol in it clearly shows that petrol, sufficient in quantity to burn and kill all the four persons, was brought by the accused. Here this witness (PW 1) also stated in his cross examination that no kerosene was found in the entire flat.

60. In addition to this, the prosecution has also tendered one more piece of evidence which is in the form of recovery at the instance of the accused under Section 27 of the Evidence Act. In this regard, the prosecution has examined P.W.14 Nilesh Kamalakar Aarate - the panch witness and proved Exhibit 50 and 50-A. Exhibit 50 is the statement of the accused under Section 27 of the Evidence Act and Exhibit 50-A is recovery panchanama. In his evidence P.W.14 has stated that on 14th April 2003 he was called by Meghwadi Police as accused made voluntary statement, admissible part of which is that, he will point

out the bucket in which he took petrol from the plastic can. This statement was recorded and thereafter the accused led police party to his flat; seal of the flat was removed and from the bath room of the said flat the accused pointed out red bucket. Discovery panchanama (Exhibit 50-A and red bucket was Article 14.

61. This red bucket was sent to Chemical Analyser. The report of the C.A. (Exhibit 67) is that bucket showed positive result regarding detection of petrol. This means that this bucket was used for pouring petrol on all the four victims.

62. Regarding this piece of evidence, the advocate for the accused contended that this was fabrication by police. Advocate for the accused contended that if on 10th April 2003 a detailed search of the house of the accused for finding out incriminating articles was made and if a detailed panchanama was prepared and number of articles were seized, then how is that police could not find out this bucket on 10th April 2003 itself and why they waited for recovery of this bucket till the accused was arrested and brought

to Bombay and made discovery statement on 14th April 2003.

63. We are not at all convinced by this submission or arguments of the advocate for the accused. It is true that on 10th April 2003 the flat of the accused was searched but it is most natural that the Investigating Officer did not understand the significance of this bucket even if it was seen on that day. They could not visualise or imagine the use of bucket for splashing or spreading the petrol on the four victims. They came to know only after the accused made disclosure statement and then they recovered this bucket. The Investigating Officer, regarding other aspect of the matter is truthful, sincere and honest. There are no reason to suspect the bonafide of the Investigating Officer and, therefore, there is nothing on record from which it can be inferred that this bucket was planted by the police to strengthen the case against the accused.

64. At this juncture it is necessary to consider one more aspect regarding preparation. The trial Court relied upon the evidence of

P.W.16. He is Vinodkumar Mandal. In his evidence in para 7 he has stated that one month before the incident, the cook asked him to bring sauce from the flat of the accused. He, therefore, went inside the flat of the accused, but inadvertently he opened white coloured plastic can and he noticed that there was petrol in the can. The trial Court has accepted this evidence as preparation of the accused to commit murder by using petrol.

65. We are in disagreement with the trial court in this regard. The petrol can seen in the house of the accused one month prior to the incident cannot be taken as preparation by accused to commit murders. Admittedly, the accused had Maruti Zen car and his son had kinetic Honda scooter and for emergency purpose he might be keeping petrol in can in his house. But this evidence of P.W.16, as discussed by the trial court in para 69 of its judgment, cannot be taken as preparation. We have also rejected the theory of using of chopper in this incident. Therefore, we do not agree with the observations and findings of the trial court in these two regards viz. testimony of this witness (PW 16)

regarding seeing the petrol can one month prior to the incident and, using of chopper by causing injuries.

66. One more aspect that throws light upon the conduct of the accused is brought on record by P.w.17 PI Shankar Nana Jagadale. He was one of the Investigating Officers. Crucial evidence in this regard is in paras 10 and 11. It is to the following effect :-

> "Para 10 :- On the 1st day, I came to know that Accused has absconded and has sped away towards Delhi. I deputed special squad in order to arrest the Accused towards Delhi. Mother in law of the Accused and Phuldeepsingh were having caller ID phone wherein the location of receiving telephone is to be detected. Phuldeepsingh repeatedly informed me the whereabouts of the Accused as his mother in law used to get telephone calls from the Accused from different place.
>
> Para 11 :- On the 11th April, 2003, I came to know from the said caller Id.

> that accused has made a telephonic call lastly from Udaipur (Rajsthan). I used to communicate regarding the whereabouts of the Accused from time to time to our chasing squad led by PSI Kakade. Accordingly, I informed the last telephone to PSI Kakade who was at about 100 kms. away from Udaipur. Chasing squad was provided with well equipped vehicle. The accused was caught hold at Kisangarh naka bandi in the state of Rajasthan. Our chasing squad reached at Kisangarh about 3.30 p.m. Accused was produced before the local magistrate in Rajsthan state and he was brought to Mumbai on 13th April 2003. PSI Kakade prepared arrest panchanama in my presence."

It is most pertinent to note that not a single question was asked to this witness on this piece of evidence in the cross examination. The aforesaid evidence, as reproduced, shows that while away from Bombay after leaving his house in the morning on 10th April 2003 the accused was making phone calls to his mother-in-law. It is

true that the mother in law has not stated any thing in her evidence about this nor the brother in law stated anything about this. But we are relying upon the evidence of P.W.17 because the accused was in fact arrested at Kisangad by PSI Kakade. It may or may not be true that the accused was making phone calls to his mother in law or brother in law but the fact remains that the accused had suddenly left the place, if his plea of alibi is to be considered, at 2 a.m. and nothing is brought on record to show that the accused had, from 10th April 2003 till the time of his arrest, at any time, phoned his family members or his mother in law or Phuldeepsingh. Ordinarily if a father or a husband or a Karta of family and a businessman, whose business requires his daily attendance and presence, is away from the house for 3/4 days, it is natural to expect from him some calls to his son Amandeepsingh who was looking after the business or to his wife or to his daughters to inform them about his journey to relieve them of their anxiety about safe travel. Because the accused, if was travelling alone with such a huge amount, then he could have phoned to his mother in law or brother in law. But not a single circumstance is brought on

record in this regard that the accused was unaware from 10th to 14th April about the death of four members of his family and if he was really unaware then there is no explanation why he did not phone them during these four days.

67. The advocate for the accused tried to attack the prosecution case on one more ground. As per the prosecution case, all the four victims were in one bed room. Two bodies were on bed and two were lying on ground. The advocate for the accused tried to contend that if all four victims were sleeping on one bed then how is that two bodies found on the ground. He also argued that if petrol was splashed on the persons of four victims then how it was, none of them woke up before accused set them to fire. In our opinion both these submissions hold no water. Finding of 10 litre can and using of bucket clearly show that the petrol in large quantity was used. Using of bucket further fortifies the prosecution case because if the petrol was sprinkled from can it would have taken time to cover all the bodies of four persons, the bed and the surroundings. But using of bucket clearly shows that splashing of petrol could be achieved within a second and

that profuse splashing of petrol could be achieved by using of bucket and then setting of them on fire would not even require five seconds. Because admittedly, out of all the oils available, petrol is most highly inflammable material. It might be that before actual death occurred two persons rolled down from the bed and fell on the ground.

68. Advocate for the accused also drew our attention to the evidence of P.W.4 where he has in para 3 stated that at about 4 to 4.30 a.m. on 10th April 2003 he heard noise like bursting of something. All servants woke up. He notice that smoke was coming out of backside roof of the flat of Amandeepsingh and there was fire inside the flat. He has also stated that he also heard sound of crying from the said flat. From this evidence of P.W.4 the advocate for the accused contended that if crying was there it means that somebody was alive even after the petrol was thrown on all the four persons and they were set to fire. According to him, this crying by somebody or someone out of four would have awakened the neighbours and the death could have been prevented. This argument is farfetched and

stretching natural meaning of the words and word beyond limit. When the body catches fire because of using of petrol and when all the four persons suffered 100% burnt as per the P.M. report, it was natural for those victims to cry in agony anguish and pain. But that cannot be sufficient for themselves to shout or cry for help or to run helter-skelter to save them. Therefore, this submission of the advocate for the accused has to be rejected.

69. The advocate for the accused contended that if the case is based on circumstantial evidence, then circumstances must be so strong that they must point out to the hypothecation about the guilt of the accused and none-else. The following circumstances are there in this case which point out to the guilt of the accused and to none-else.

(1) Strained relations of the accused with the family members including his wife;

(2) The accused coming to his flat on 9th April 2003 at midnight;

(3) The accused having quarrel with his wife for five minutes;

(4) Ten litre can with petrol residue found in the house;

(5) The bucket showing positive result to the test conducted by the Chemical Analyser found to have been used for splashing or throwing the petrol;

(6) Abscontion of the accused from the scene of offence immediately thereafter;

(7) Incident occurring between 4 to 4.30 a.m.;

(8) The accused pointing out the bucket in his statement under Section 27 of the Evidence Act;

(9) Arrest of the accused at Kisangad, Madanganj (Rajsthan) four days thereafter with huge cash of Rs.7,68,080/-, with safari dresses, turbans and 24 silver coins etc.

(10) Raising false defence of alibi and giving false explanation to the last Question No.168 by the accused in his Statement under Section 313 of the Cr.P.C. ;

(11) Full opportunity to the accused to kill all the four persons and his conduct viz. no-where expressing regrets or remorse or repentant during or after trial.

69. One of the submissions of the advocate for the accused was that the accused was not given fair trial because number of questions in the cross examination of the prosecution witnesses were disallowed by the trial Court. Those questions are as under :-

Para 14 of evidence of P.W. No.1 Prakash Shivram Kamble :-

(A) Q. Have you stated in the FIR regarding chopper and the blood ?

(The question was disallowed because this witness has not stated anything in the

examination in chief regarding chopper and the blood. Putting the question to the witness during course of cross examination and applying the reply of the witness by way of omission is not at all permissible in the law)

Note : Ld. defence counsel is asking several irrelevant question and suggesting the Court to record those irrelevant questions and give the findings. It is not necessary to give the findings of each and every irrelevant question.

Para 5 of evidence of P.W.5 Smt.Bhagwantkaur Oberoi :-

(B) (Note : Defence Counsel asked following question to the witness that, " I put it to you that Accused has never given his consent for handing over the ornaments and other articles to you as deposited by you."

Order of the trial Court :-

"Said question was disallowed by me and thereafter Defence counsel filed Application Exh.32 for allowing the said question. The Appln.Exh.32 and permission to ask the said question is hereby rejected because whatever stated by the Accused during course of investigation except discovery statement is hit by Sections 24 to 26 of Indian Evidence Act and such evidence is inadmissible in evidence. Question B in the Appln. Exh.32 was never asked to the witness."

Para 2 of evidence of P.W.9 Shekhar Mahadev Chalke :-

(C) (Note : Defence counsel filed Application Exh.41 seeking permission to ask the question to the witness as under:-

Q. Could you say at present how many shikhs with turban is sitting in the court presently ?

Order of the trial Court :-

"The said question was already disallowed by me orally because there cannot be test identification parade in the Court hence, the Application Exh.41 is rejected."

Para 13 of evidence of P.W. 16 Vinodkumar Gudri Mandal :-

(D) Q. If the red coloured material is put in the white plastic can,the said can will appear red ?

Order of the trial Court :-

"The question is disallowed being hypothetical question."

70. For easy reference we have given alphabetical numbers to these aforesaid questions which were disallowed. It is to be seen, with reference to the submissions of the advocate for the accused, whether refusal to put these questions and the orders there on passed by the

trial court has resulted in miscarriage of justice or has resulted in not giving fair trial to the accused.

71. So far Question (A) is concerned, admittedly, the P.W. No.1 Prakash Shivaram Kamble has not uttered a word about copper or blood on the chopper in his examination-in-chief. It was in the cross examination that the defence has brought the existence of chopper in the hall and then an attempt was made to confront the witness with the FIR for the said omission. The order of the trial Court disallowing the question cannot, therefore, in this background, be said to be perverse.

72. Question (B) relates to P.W.5 Smt.Bhagwantkaur Oberoi. Here also in her examination-in-chief she did not state anything about the accused giving consent for handing over ornaments and other articles to anybody. But a suggestion that was put was with reference to deposition given by her. The word "deposition" obviously refers to the evidence given in Court and not to the statement under Section 162 of the Cr.P.C. When the witness has not deposed in

examination-in-chief about this fact, then putting that question in the manner in which it was put was liable to be rejected and was rightly rejected by the trial court. No prejudice is caused to the accused thereby.

73. Question (C) relates to P.W.9 Shekhar Mahadev Chalke. He was a panch witness called by the police on 14th April 2003. Some articles were shown to him. They were one half shirt, one full pant, one shikh turban and one pair of chappals which were on the person of accused, which were seized in presence of this witness along with one gold plated wrist watch. He proved the panchanama to that effect which is at Exhibit 40. Thereafter the article numbers were given to those items. In this background of the evidence of this witness P.W.9, the question that was put about how many persons present was most irrelevant and uncalled for. It was not touching the evidence of the witness given in examination in chief. The witness has not identified the accused by reason of his having turban and, therefore, the trial court was justified in rejecting that question. However we make it clear that no harm could have been caused if the

said question is allowed by the trial court. But when it is contended that disallowing the question has resulted into miscarriage of justice and not giving fair trial to the accused, we do not find that, rejection of that question has any such result.

74. So far as Question (D) is concerned, it has come in the evidence of P.W.16 Vinodkumar Gudri Mandal. A little background for this question is necessary. In para 7 this witness has stated that one month before the incident. The cook asked him to bring sauce from the flat of the accused. This witness went to the flat of the accused. But inadvertently he opened white coloured plastic can and noticed that there was a petrol in the said can. This piece of evidence was treated by the trial Court as preparation. We have rejected that part of reasoning and conclusion of the trial Court. But it appears that in this background Question (D) was asked and the trial court rejected it on the ground that it was hypothetical question. That ruling does not appear to be proper. The question should have been allowed. But at the same time we hold that disallowing that question has not at

all resulted in not giving fair trial to the accused.

75. We could note down from the entire evidence that only four questions were disallowed. Advocate for the accused stated that he had to file applications for rejected questions. But they were not brought to our notice. Rejection of these four questions, for the reasons stated above, does not result in miscarriage of justice or not giving fair trial.

76. It was also argued by the advocate for the accused that the P.W.5 Smt.Bhagwantkaur Oberio, who is the mother in law and P.W.3 Phuldeepsingh, who is the brother in law, are the interested witnesses because they are closely related to all the victims. He also contended that Phuldeepsingh (PW 3) was instrumentally getting the accused implicated in this offence because he was taking all the leading role in pointing the guilty finger to the accused. So far as P.W.5 Bhalwantkaur is concerned, she was the mother of victim Kanwaljeetkaur. She has stated about the treatment that was being given by the accused to her daughter Kanwaljeetkaur, two daughters Neeti and Taniya and a son

Amandeepsing. A mother is only person on earth to whom a married girl confines firstly or at the initial stage. Therefore, stating about that ill-treatment in court cannot be said to be an attempt by the said witness (PW 5) to falsely implicate the accused. She has not shown any zeal or enthusiasm for implicating the accused. There are no contradictions or omissions. There is no exaggeration in her evidence. She has not tried to improve her story anywhere. She has not attributed any motive and all this frustrates the arguments of the advocate for the accused in this regard.

77. So far as Phuldeepsingh (PW 3) is concerned, he is the husband of sister of deceased Kanwaljeetkaur. He has only stated that the accused was dictator in his family and all that we have discussed above; that he received phone call from the landlord on 10th April 2003; that there was a fire in the flat of accused; he went there and found that the accused along with his car was not present there and he saw four bodies. Nowhere in his evidence he has tried to attribute any motive to the accused nor he has tried to improve his story or exaggerate. There

are no contradictions or omissions in his evidence. Merely because he was present and he identified the bodies and gave his statement to the police, it cannot be said that he was instrumentally implicating the accused. There is no material in the cross examination of this witness or in the cross examination of any other witness particularly Investigating Officer that Phuldeepsingh (PW 3) played leading role in investigation. All these arguments of the advocate for the accused have, therefore, to be rejected.

78. To sum up, therefore, we have no hesitation in concluding that the prosecution has proved its case beyond reasonable doubt. All the circumstances noted above, point to one thing only and that is the guilt of the accused. No other inference can be drawn in that regard.

79. Now coming to the last part about sentence, the trial court has awarded death sentence.. Because, according to the trial Court, this is the rarest of the rare case. The learned APP fully justified the reasoning and findings of the trial court in that regard and

cited some authorities in support. The advocate for the accused also cited certain authorities in support of his contention that death sentence was not warranted in this case.

80. Advocate for the accused relied upon judgment of the Supreme Court reported in **2002 (3) Crimes 71 (SC) [Ram Anup Singh & ors. v/s. State of Bihar.** In that case four innocent lives were lost. The appellants before the Supreme Court annihilated the entire family of Madan Singh. The trial Court sentenced the appellants to death. The High Court affirmed the sentence of death passed against the appellants Babban Singh and Lallan Singh, but refused to confirm the sentence of death against Ram Anup Singh. While considering this aspect of sentence the Supreme Court found the following things :-

> "However, one aspect of the matter deserves to be mentioned while on the question of sentence. It is not disputed that the gift deed was executed sometime in the year 1987 which gave rise to strained relationship between Madan Singh on the one hand and Ram Anup Singh and

his sons on the other. There is evidence on record to suggest that several Panchayatis were held to resolve the dispute. The case of the prosecution is that Ram Anup Singh even resorted to litigation and instigated Madan Singh to file a Civil Suit against his son-in-law for cancellation of the deed of gift. That matter was however compromised and it appears that thereafter cordial relationship prevailed in the family of Madan singh. Minor disputes arose between Madan singh and Ram anup singh from time to time. However, while all these events took place over ten years, there is not even a suggestion that the appellants ever resorted to violence or that any untoward incident took place in the past. The appellants were no doubt aggrieved but they did not take the law into their hands though they tried all other non violent methods available to them, including litigation and Panchayati. In the background of such facts on fails to understand why on the date of occurrence suddenly the

> appellants decided to do away with all the members of the family. The High Court has also considered this aspect of the matter and found that there was nothing to suggest that the crime perpetuated by the appellants was by way of relation."

Then in para 27, the Supreme Court observed that there was no evidence on record to suggest that the appellants were the menace to society as evident by their pass deeds or that they were those who could not be reformed or rehabilitated and that they constituted a continuing threat to the society and, therefore, death sentence was not confirmed and it was converted into imprisonment for life.

81. Next judgment that was cited by the advocate for the accused was reported in **2002 (4) Crimes 11 (SC) [State of Punjab v/s. Gurmej Singh]**. In that case Gurmej Singh - the accused on November 1, 1993 assaulted his brother Jagjit Singh at their house as well as wife of his brother Charanjit Kaur, their son Swaranjit Singh, daughter Gurmeet Kaur and Amarjit Kaur

daughter of sister of Charanjit Kaur. Three persons died viz. Jagjit Singh, his wife Charanjit Kaur and their son Swaranjit Singh and, others received injuries. The trial Court awarded sentence of death on each count with fine. It appears from the judgment that the matter was confined before the Supreme Court to the sentence to be awarded to Respondent Gurmej Singh. The trial Court awarded death sentence. The High Court, however, observed that in view of the decisions of the Supreme Court in the cases of **[Bachan Sing vs. State of Punjab, 1980(2) SCC 684], [Machi Singh & ors vs. State of Punjab, AIR 1983 SC 957] and [State through Superintendent of Police, CBI/SIT Vs. Nalini & ors. 1999 (5) SCC 253],** it could not be said to be rare of rare of rarest cases, so as to call for penalty of death. While confirming sentence awarded by the High Court, the Supreme Court found in that case that, the accused/respondent had been demanding and asking about the money from the deceased Jagjit Singh which was sent to him by the respondent from Dubai. It appears that the explanation or excuses which were being given by the deceased did not convince him and the dispute inter-se and mistrust between the two

brothers has been widening leading to the heinous crime in which three lives were lost and three other persons were left injured. Therefore, in that background of the matter, the Supreme Court held that it was not rare of the rarest case and, view of the High Court did not call for any interference.

82. The third case that was cited by the advocate for the accused is reported in **2003 (3) Crimes 234 (SC) [Ram Pal v/s. State of U.P.]** 21 people were killed in the incident who were murdered by gun shot injuries or by burning them in latched houses. Two of the close relatives of the family of accused were murdered and some of the victims family were facing trial for that purpose and, therefore, the Supreme Court found that this circumstance could be treated as one which amounted to a provocation and, therefore, sentence was reduced to imprisonment for life. In this case the Supreme Court considered two constitutional bench judgments. In Bachan Singh v/s. State of Punjab where guide lines were provided by the Supreme Court as circumstances to be treated as aggravating and the circumstances to be treated as mitigating. Since the learned

APP relied upon the judgment separately, we will consider it later on.

83. The advocate for the accused relied upon another judgment reported in **2003 (4) Crimes 372 (SC) [Prem Sagar v/s. Dharambir & ors.]**. In that case three persons were killed. [There were two Appeals in which this judgment was given]. While considering the aspect of sentence, the Supreme Court para 7 observed as :-

> "Brutality is in built in every murder but in case of every murder death sentence is not imposed. Life imprisonment is the rule and death sentence is the exception. The latter sentence is imposed in rarest of rare cases. Taking note of the mitigation circumstances indicated by the High Court, we do not find any scope for interference with the life sentence awarded and to alter same to death sentence."

However, what were those mitigating circumstances noted by the High Court could be ascertained from

the said reported judgment.

84. Another judgment reported in **2004 (1) Crimes 288 (SC) [Sardar Khan v/s. State of Karnataka].** It was a case of murder of wife. Offences for which the accused was convicted were under Sections 302 and 498A. That is altogether different case not applicable to the facts of the present case. A case of single murder has to be distinguished from multiple murders.

85. On the basis of aforesaid judgments, the advocate for the accused made mainly two submissions. First was that in case of family dispute even if there are multiple murders, the view of the Supreme Court was that since if the accused is not menace to the society then death sentence should not be awarded. Second submissions of the advocate for the accused was that at the time of commission of the offence, the age of the accused was 50 or 52 years and, therefore, there was no point in sentencing such a man to death. He further contended that the accused can be reformed and his sisters and brothers are ready to take care of him in that regard.

86. On the other hand the learned APP firstly relied upon judgment reported in **(1980) 2 SCC 684 [Bachansingh vs. State of Punjab]**. The reliance was placed by the learned APP on this judgment mainly for the purpose of guide lines suggested by the Supreme Court about aggravating and mitigating circumstances. They are as under:-

> Aggravating circumstances:- A court may, however, in the following cases impose the penalty of death in its discretion:
>
> (a) if the murder has been committed after previous planning and involves extreme brutality; or
>
> (b) if the murder involves exceptional depravity; or
>
> (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public

servant and was committed-

(i) while such member or public servant was on duty; or

(ii) in consequences of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the Code of Criminal Procedure, ;1973, or who had rendered assistance to a magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

Mitigating Circumstances :- In the exercise of its discretion in the above cases, the court shall take into account the following circumstances :-

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

87. Reliance was placed by the learned APP upon the judgment of Supreme Court reported in **AIR 1983 SC 957 [Machhi Singh and others v. State of Punjab]**. In that case on 12th August 1977 at about 8.30 p.m. four persons who were wife and three sons of Amar Singh were done to death. The appellants Machhi Singh and Mohinder Singh were each armed with a rifle and their three companions were armed with Kirpans. Machhi Singh fired a shot at Biban Bai, Mohinder Singh fired a shot at Balwant Singh both of whom were

sleeping on a cot. Two more shots were fired by Machhi Singh on Jagtar Singh and Kulwant Singh and appellant Mohinder Singh fired a shot at Gurucharan Singh. Their three companions gave Kirpans blows to the other members of the family. Thereafter all five culprits fled from there. While dealing with question of sentence the Supreme Court observed as under :-

> "The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very

existence of rule of law and the fear being brought to book operates as a deterrent to those who have not scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. If may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict that penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission

of the crime or the antisocial or abhorrent nature of the crime, such as for instance:

I Manner of Commission of Murder :-

When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community. for instance :-

(i) When the house of the victim is set a flame with the end in view to roast him alive in the house.

(ii) When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II Motive for commission of murder :-

When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward; (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of their murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust; (c) a murder is committed in the course for betrayal of the motherland.

III Anti-social or socially abhorrent nature of crime.

(a) When a murder of a member of a Schedule Caste or minority community etc., is committed not for personal reasons, but in circumstances which arouse wrath. For instance when such a crime is committed in order to terrorize

such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustice and in order to restore the social balance;

(b) In case of "bride burning" and what are known as ‘dowry deaths’ or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV Magnitude of Crime.

When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V Personality of victim of murder

When the victim of murder is (a) an

> innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age on infirmity. (c) when the victim is a person vis-a-vis whom the murderer is in a position of domination or trust. (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other hand personal reason.

Ultimately the death sentence of Machhi Singh was confirmed because it was a cold blooded murder and the victims were helpless and undefended. And what was their fault except that they were the immediate family of Amar Singh. The offence committed was of an exceptionally depraved and heinous character. The manner of its execution and its design would put it at the level of extreme atrocity and cruelty. The deceased woman and her children had offered no offence to Machhi Singh and Mohinder Singh.

. The Supreme Court in Crime No.II observed as under :-

> "The crime committed carries features which could be utterly horrendous especially when we know the weapons and the manner of their use. The victims could offer no resistance to the accused appellant. The law clamours for a sterner sentence, the crime being heinous, atrocious and cruel."

. Regarding Crime No.III about death of an old mane Wanjar singh and young man Satnam Singh by Machhi Singh and Mohinder Singh the Supreme Court observed :-

> "These two defenceless and helpless men were put to death while asleep. The crime was gruesome and cold blooded revealing the propensity of the accused appellants to commit murder."

Therefore, in that background and considering other crimes against them, the death sentence of Machhi Singh, Kashmir Singh and Jagir Singh was

confirmed by the Supreme Court.

88. The learned APP also relied upon the judgment of the Supreme Court reported in **2003 (8) SCC 224 [State of Rajasthan v/s. Kheraj Ram]**. In that case the accused, who was suspecting infidelity on the part of his wife, killed her and his two children and brother in law on 10th October 1992. The observation of Supreme Court relied upon the case of Machhi Singh, as discussed above and observations made therein and finally in para 13 the Supreme Court has held as under :-

> "The factual matrix as described by the prosecution and established by the evidence on record shows the cruel and diabolic manner in which the killings were conceived and executed. The accused did not act on any spur of the moment provocation. It was deliberately plan and meticulously executed. There was not even any remorse for such gruesome act. On the contrary, after the killing the accused tried to divert attention and used P.W.9 as the cat’s paw and, the

victims were two innocent children and a helpless woman. The crimes were brutal grotesque, diabolical, revolting and dastardly manner and, therefore, the sentence was confirmed.

89. Another case relied upon by the APP is, **AIR 2005 SC 2059 [Holiram Bordoloi v. State of Assam]**. The incident occurred on 26.11.1996. Deceased Narayan Bordoloi along with his wife and three children were staying in a hut. The appellant along with 17 persons came to the house of Narayan. The appellant Holiram and other accused were armed with Lathi, dao, and jong and various other weapons. On seeing them, Narayan and his brother went inside the house and remained there along with their minor son. The accused started pelting stones. Then they tide the door from out side and set the hut on fire. One son Nayanmoni tried to came out of the hut but he was thrown into the fire.

. In this background, while considering the aspect of sentence, the Supreme Court found that there were no mitigating circumstances and so far as aggravating circumstances are concerned, the

Supreme court held that (a) this was a case of cold blooded murder; (b) the accused was leading a gang; (c) the victim did not provoke or contribute to the incident; (d) two victims were burnt to death by locking the house from outside; (e) a boy who managed to come out, was thrown back to the fire; (f) one Nagarmol Bordoloi who has come out of the house was cut into pieces and (g) the entire incident was pre-planned. Therefore, the Supreme Court confirmed the death sentence.

90. The learned APP also relied upon the judgment of the Supreme Court reported in **(2003) 12 SCC 199 [Praveen Kumar v/s State of Karnataka]**. In that case the Supreme Court found that the accused had committed cold blooded, premeditated murders, including that of a young child, who were his relatives and well-wishers. It was also observed by the Supreme Court that it was a rarest of the rare case.

91. One more judgment cited by the learned APP, reported in **(2005) 4 SCC 165 [Saibanna v/s State of Karnataka]**, in which, 2nd wife and a daughter aged about one and half years were

killed when they were sleeping at night by the accused/husband and, therefore, considering the judgment of the Supreme court in Bachhan Singh case and Machhi Singh case, the death sentence was confirmed by the Supreme Court.

92. Further there is absolutely no evidence of provocation to the accused by any of the four members of his family. There is no material on record from which it can be reasonably held that the accused had any occasion to react in such a cruel manner against the members of his own family. From the evidence discussed above it is clear that the accused wiped out inmates of his family in a very cruel and calculated manner when all the members of the family were fast sleep, they were absolutely helpless and not capable of making any resistance or defending themselves and, in order to cause death, the accused used petrol profusely.

93. It was also argued by the advocate for the accused that before the incident, the accused was not involved in any criminal matter nor was he convicted for any offence. This can not be considered as a mitigating factor in favour of

the accused which will outweigh all the grave factors and circumstances in which the murders of four were committed by him.

94. Further, as has been observed by the Supreme Court in **1996 AIR SCW 4166 [Surja Ram v/s. State of Rajasthan.]**, "While considering the punishment to be given to the accused, the Court should be alive not only to the right of the criminal to be awarded just and fair punishment by administering justice tempered with such mercy as the criminal may justly deserve, but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment confirming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused.

95. In the case of **Ranjeet Singh v/s. State of Rajsthan reported in AIR 1988 SC 672,** the entire family consisting of father, mother, son and five daughter were done to death when they were fast sleep. While considering the aspect of sentence the Supreme Court observed in Para 12 as

under :-

> "With regard to the sentence of death, there cannot be two opinions. The manner in which the entire family was eliminated indicates that the offence was deliberate and diabolical. It was predetermined and cold blooded. It was absolutely devilish and dastardly.

96. An argument was advanced before us that the crime may be viewed as confined to the members of the family; and, therefore, the accused cannot be considered to be a menace to society. Having considered the submissions, it is not possible to view the family as a unit, separate from society. In fact, the family is considered as a basic unit of society. Any offence of this nature cannot leave the society unaffected and the society has a vital interest in ensuring that such an accused is dealt with in accordance with law and to protect itself. We are, therefore, unable to consider the fact that if only family members have been murdered it is conclusive that the accused is not a menace to the society. It would be indeed anomalous if an

offender is treated as having committed a crime of a lesser degree, if he perpetrates it only against a member of the family.

97. Considering, therefore, all these judgments cited by the learned APP and the advocate for the accused, and following the guide-lines laid down in the cases of Bachhan Singh and Machhi Singh we have no hesitation to conclude that this is a case requiring death sentence for the following reasons.

(1) Four members of the family were killed by the accused;

(2) They included his wife, his only son and two daughters one of them was minor;

(3) All of them were killed while they were asleep and there was no provocation by any of them nor any resistance;

(4) They were killed in a most gruesome, diabolic and cruel manner by

pouring petrol upon them and set them to fire that resulted in death and burnt to the extent of 100%.

(5) This was a pre-planned murder. Because accused had brought sufficient petrol in his house and this fact was proved by finding a 10 litre can with some petrol in his house and using of red bucket which was used to splash petrol instantly on all of four persons when they were in sleeping condition.

(6) The accused raised false plea and defence and immediately ran away from the scene of offence in his car taking with him cash available to him to the extent of Rs.7,68,080/- and also taking with him 24 silver coins which he could have sold and collected money and seven safari dresses and seven turbans.

(7) This plan of escape was made by the accused much in advance because no man much less the businessman like accused who was paying income tax could

have kept such huge amount in his home.

(8) Raising false plea of alibi and giving false pretext of going to see his ailing sister or wife of defendant No.3 to Delhi.

(9) There are no mitigating circumstances in favour of the accused.

(10) There was no remorse or repentance on the part of the accused at any time.

98. Considering therefore all these circumstance no other inference can be drawn except that this is a rarest of rare case. The age of the accused is immaterial so also theory of his proposed reformation. The trial Court was fully justified in awarding maximum sentence of death and, therefore, we pass the following sentence.

:ORDER:

. Reference is accepted.

. Death sentence awarded to the Accused - Mr.Ajitsingh Harnamsingh Gujral is confirmed.

. Appeal of the accused, being Criminal Appeal No.518 of 2005, against his conviction is dismissed.

. Order of the trial Court regarding disposal of the property remains same.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]

. After this judgment and order was pronounced in open Court, advocate for the accused prayed for staying the operation of the order for a period of eight weeks in order to enable the accused to challenge this judgment before the Supreme Court. Considering the confirmation of death, the judgment and order pronounced today is stayed for a period of eight weeks from today.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]